

## **Chapter 62.**

### **Public Utilities.**

#### **Article 1.**

##### **General Provisions.**

##### **§ 62-1. Short title.**

This Chapter shall be known and may be cited as the Public Utilities Act. (1963, c. 1165, s. 1.)

##### **§ 62-2. Declaration of policy.**

(a) Upon investigation, it has been determined that the rates, services and operations of public utilities as defined herein, are affected with the public interest and that the availability of an adequate and reliable supply of electric power and natural gas to the people, economy and government of North Carolina is a matter of public policy. It is hereby declared to be the policy of the State of North Carolina:

- (1) To provide fair regulation of public utilities in the interest of the public;
- (2) To promote the inherent advantage of regulated public utilities;
- (3) To promote adequate, reliable and economical utility service to all of the citizens and residents of the State;
- (3a) To assure that resources necessary to meet future growth through the provision of adequate, reliable utility service include use of the entire spectrum of demand-side options, including but not limited to conservation, load management and efficiency programs, as additional sources of energy supply and/or energy demand reductions. To that end, to require energy planning and fixing of rates in a manner to result in the least cost mix of generation and demand-reduction measures which is achievable, including consideration of appropriate rewards to utilities for efficiency and conservation which decrease utility bills;
- (4) To provide just and reasonable rates and charges for public utility services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices and consistent with long-term management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy;
- (4a) To assure that facilities necessary to meet future growth can be financed by the utilities operating in this State on terms which are reasonable and fair to both the customers and existing investors of such utilities; and to that end to authorize fixing of rates in such a manner as to result in lower costs of new facilities and lower rates over the operating lives of such new facilities by making provisions in the rate-making process for the investment of public utilities in plants under construction;
- (5) To encourage and promote harmony between public utilities, their users and the environment;
- (6) To foster the continued service of public utilities on a well-planned and coordinated basis that is consistent with the level of energy needed for the protection of public health and safety and for the promotion of the general welfare as expressed in the State energy policy;

- (7) To seek to adjust the rate of growth of regulated energy supply facilities serving the State to the policy requirements of statewide development;
- (8) To cooperate with other states and with the federal government in promoting and coordinating interstate and intrastate public utility service and reliability of public utility energy supply;
- (9) To facilitate the construction of facilities in and the extension of natural gas service to unserved areas in order to promote the public welfare throughout the State and to that end to authorize the creation of expansion funds for natural gas local distribution companies or gas districts to be administered under the supervision of the North Carolina Utilities Commission; and
- (10) To promote the development of renewable energy and energy efficiency through the implementation of a Renewable Energy and Energy Efficiency Portfolio Standard (REPS) that will do all of the following:
  - a. Diversify the resources used to reliably meet the energy needs of consumers in the State.
  - b. Provide greater energy security through the use of indigenous energy resources available within the State.
  - c. Encourage private investment in renewable energy and energy efficiency.
  - d. Provide improved air quality and other benefits to energy consumers and citizens of the State.

(b) To these ends, therefore, authority shall be vested in the North Carolina Utilities Commission to regulate public utilities generally, their rates, services and operations, and their expansion in relation to long-term energy conservation and management policies and statewide development requirements, and in the manner and in accordance with the policies set forth in this Chapter. Nothing in this Chapter shall be construed to imply any extension of Utilities Commission regulatory jurisdiction over any industry or enterprise that is not subject to the regulatory jurisdiction of said Commission.

Because of technological changes in the equipment and facilities now available and needed to provide telephone and telecommunications services, changes in regulatory policies by the federal government, and changes resulting from the court-ordered divestiture of the American Telephone and Telegraph Company, competitive offerings of certain types of telephone and telecommunications services may be in the public interest. Consequently, authority shall be vested in the North Carolina Utilities Commission to allow competitive offerings of local exchange, exchange access, and long distance services by public utilities defined in G.S. 62-3(23)a.6. and certified in accordance with the provisions of G.S. 62-110, and the Commission is further authorized after notice to affected parties and hearing to deregulate or to exempt from regulation under any or all provisions of this Chapter: (i) a service provided by any public utility as defined in G.S. 62-3(23)a.6. upon a finding that such service is competitive and that such deregulation or exemption from regulation is in the public interest; or (ii) a public utility as defined in G.S. 62-3(23)a.6., or a portion of the business of such public utility, upon a finding that the service or business of such public utility is competitive and that such deregulation or exemption from regulation is in the public interest.

Notwithstanding the provisions of G.S. 62-110(b) and G.S. 62-134(h), the following services provided by public utilities defined in G.S. 62-3(23)a.6. are sufficiently competitive and shall no longer be regulated by the Commission: (i) intraLATA long distance service; (ii) interLATA long

distance service; and (iii) long distance operator services. A public utility providing such services shall be permitted, at its own election, to file and maintain tariffs for such services with the Commission up to and including September 1, 2003. Nothing in this subsection shall limit the Commission's authority regarding certification of providers of such services or its authority to hear and resolve complaints against providers of such services alleged to have made changes to the services of customers or imposed charges without appropriate authorization. For purposes of this subsection, and notwithstanding G.S. 62-110(b), "long distance services" shall not include existing or future extended area service, local measured service, or other local calling arrangements, and any future extended area service shall be implemented consistent with Commission rules governing extended area service existing as of May 1, 2003.

The North Carolina Utilities Commission may develop regulatory policies to govern the provision of telecommunications services to the public which promote efficiency, technological innovation, economic growth, and permit telecommunications utilities a reasonable opportunity to compete in an emerging competitive environment, giving due regard to consumers, stockholders, and maintenance of reasonably affordable local exchange service and long distance service.

(b1) Broadband service provided by public utilities as defined in G.S. 62-3(23)a.6. is sufficiently competitive and shall not be regulated by the Commission.

(c) The policy and authority stated in this section shall be applicable to common carriers of passengers by motor vehicle and their regulation by the North Carolina Utilities Commission only to the extent that they are consistent with the provisions of the Bus Regulatory Reform Act of 1985. (1963, c. 1165, s. 1; 1975, c. 877, s. 2; 1977, c. 691, s. 1; 1983 (Reg. Sess., 1984), c. 1043, s. 1; 1985, c. 676, s. 3; 1987, c. 354; 1989, c. 112, s. 1; 1991, c. 598, s. 1; 1995, c. 27, s. 1; 1995 (Reg. Sess., 1996), c. 742, ss. 29-32; 1998-132, s. 18; 2003-91, s. 1; 2005-95, s. 1; 2007-397, s. 1.)

### **§ 62-3. Definitions.**

As used in this Chapter, unless the context otherwise requires, the term:

- (1) "Broadband service" means any service that consists of or includes a high-speed access capability to transmit at a rate of not less than 200 kilobits per second in either the upstream or downstream direction and either (i) is used to provide access to the Internet, or (ii) provides computer processing, information storage, information content, or protocol conversion, including any service applications or information service provided over such high-speed access service. "Broadband service" does not include intrastate service that was tariffed by the Commission and in effect as of the effective date of this subdivision.
- (1a) "Broker," with regard to motor carriers of passengers, means any person not included in the term "motor carrier" and not a bona fide employee or agent of any such carrier, who or which as principal or agent engages in the business of selling or offering for sale any transportation of passengers by motor carrier, or negotiates for or holds himself, or itself, out by solicitation, advertisements, or otherwise, as one who sells, provides, furnishes, contracts, or arranges for such transportation for compensation, either directly or indirectly.

- (1b) "Bus company" means any common carrier by motor vehicle which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of passengers over fixed routes or in charter operations, or both, except as exempted in G.S. 62-260.
- (2) "Certificate" means a certificate of public convenience and necessity issued by the Commission to a public utility or a certificate of authority issued by the Commission to a bus company.
- (3) "Certified mail" means such mail only when a return receipt is requested.
- (4) "Charter operations" with regard to bus companies means the transportation of a group of persons for sightseeing purposes, pleasure tours, and other types of special operations, or the transportation of a group of persons who, pursuant to a common purpose and under a single contract, and for a fixed charge for the vehicle, have acquired the exclusive use of a passenger-carrying motor vehicle to travel together as a group to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the chartered group after having left the place of origin.
- (5) "Commission" means the North Carolina Utilities Commission.
- (6) "Common carrier" means any person, other than a carrier by rail, which holds itself out to the general public to engage in transportation of persons or household goods for compensation, including transportation by bus, truck, boat or other conveyance, except as exempted in G.S. 62-260.
- (7) "Common carrier by motor vehicle" means any person which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of persons or household goods or any class or classes thereof for compensation, whether over regular or irregular routes, or in charter operations, except as exempted in G.S. 62-260.
- (7a) "Competing local provider" means any person applying for a certificate to provide local exchange or exchange access services in competition with a local exchange company.
- (8), (9) Repealed by Session Laws 1995, c. 523, s. 1.
- (9a) "Fixed route" means the specific highway or highways over which a bus company is authorized to operate between fixed termini.
- (10) "Foreign commerce" means commerce between any place in the United States and any place in a foreign country, or between places in the United States through any foreign country.
- (11) "Franchise" means the grant of authority by the Commission to any person to engage in business as a public utility, whether or not exclusive or shared with others or restricted as to terms and conditions and whether described by area or territory or not, and includes certificates, and all other forms of licenses or orders and decisions granting such authority.
- (12) "Highway" means any road or street in this State used by the public or dedicated or appropriated to public use.

- (13) "Industrial plant" means any plant, mill, or factory engaged in the business of manufacturing.
- (14) "Interstate commerce" means commerce between any place in a state and any place in another state or between places in the same state through another state.
- (15) "Intrastate commerce" means commerce between points and over a route or within a territory wholly within this State, which commerce is not a part of a prior or subsequent movement to or from points outside of this State in interstate or foreign commerce, and includes all transportation within this State for compensation in interstate or foreign commerce which has been exempted by Congress from federal regulation.
- (16) "Intrastate operations" means the transportation of persons or household goods for compensation in intrastate commerce.
- (16a) "Local exchange company" means a person holding, on January 1, 1995, a certificate to provide local exchange services or exchange access services.
- (17) "Motor carrier" means a common carrier by motor vehicle.
- (18) "Motor vehicle" means any vehicle, machine, tractor, semi-trailer, or any combination thereof, which is propelled or drawn by mechanical power and used upon the highways within the State.
- (19) "Municipality" means any incorporated community, whether designated in its charter as a city, town, or village.
- (20) Repealed by Session Laws 1995, c. 523, s. 1.
- (21) "Person" means a corporation, individual, copartnership, company, association, or any combination of individuals or organizations doing business as a unit, and includes any trustee, receiver, assignee, lessee, or personal representative thereof.
- (22) "Private carrier" means any person, other than a carrier by rail, not included in the definitions of common carrier, which transports in intrastate commerce in its own vehicle or vehicles property of which such person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent, or bailment, or when such transportation is purely an incidental adjunct to some other established private business owned and operated by such person other than the transportation of household goods for compensation.
- (23) a. "Public utility" means a person, whether organized under the laws of this State or under the laws of any other state or country, now or hereafter owning or operating in this State equipment or facilities for:
  - 1. Producing, generating, transmitting, delivering or furnishing electricity, piped gas, steam or any other like agency for the production of light, heat or power to or for the public for compensation; provided, however, that the term "public utility"

shall not include persons who construct or operate an electric generating facility, the primary purpose of which facility is either for (i) a person's own use and not for the primary purpose of producing electricity, heat, or steam for sale to or for the public for compensation or (ii) a person who constructs or operates an eligible solar energy facility on the site of a customer's property and leases such facility to that customer, as provided by and subject to the limitations of Article 6B of this Chapter;

2. Diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation, or operating a public sewerage system for compensation; provided, however, that the term "public utility" shall not include any person or company whose sole operation consists of selling water to less than 15 residential customers, except that any person or company which constructs a water system in a subdivision with plans for 15 or more lots and which holds itself out by contracts or other means at the time of said construction to serve an area containing more than 15 residential building lots shall be a public utility at the time of such planning or holding out to serve such 15 or more building lots, without regard to the number of actual customers connected;
  3. Transporting persons or household goods by street, suburban or interurban bus for the public for compensation;
  4. Transporting persons or household goods by motor vehicles or any other form of transportation for the public for compensation, except motor carriers exempted in G.S. 62-260, carriers by rail, and carriers by air;
  5. Transporting or conveying gas, crude oil or other fluid substance by pipeline for the public for compensation;
  6. Conveying or transmitting messages or communications by telephone or telegraph, or any other means of transmission, where such service is offered to the public for compensation.
- b. The term "public utility" shall for rate-making purposes include any person producing, generating or furnishing any of the foregoing services to another person for distribution to or for the public for compensation.
  - c. The term "public utility" shall include all persons affiliated through stock ownership with a public utility doing business in this State as parent corporation or subsidiary corporation as defined in G.S. 55-2 to such an extent that the Commission shall find that such affiliation has an effect on the rates or service of such public utility.
  - d. The term "public utility," except as otherwise expressly provided in this Chapter, shall not include a municipality, an authority

organized under the North Carolina Water and Sewer Authorities Act, electric or telephone membership corporation; or any person not otherwise a public utility who furnishes such service or commodity only to himself, his employees or tenants when such service or commodity is not resold to or used by others; provided, however, that any person other than a nonprofit organization serving only its members, who distributes or provides utility service to his employees or tenants by individual meters or by other coin-operated devices with a charge for metered or coin-operated utility service shall be a public utility within the definition and meaning of this Chapter with respect to the regulation of rates and provisions of service rendered through such meter or coin-operated device imposing such separate metered utility charge. If any person conducting a public utility shall also conduct any enterprise not a public utility, such enterprise is not subject to the provisions of this Chapter. A water or sewer system owned by a homeowners' association that provides water or sewer service only to members or leaseholds of members is not subject to the provisions of this Chapter.

- e. The term "public utility" shall include the University of North Carolina insofar as said University supplies telephone service, electricity or water to the public for compensation from the University Enterprises defined in G.S. 116-41.1(9).
- f. The term "public utility" shall include the Town of Pineville insofar as said town supplies telephone services to the public for compensation. The territory to be served by the Town of Pineville in furnishing telephone services, subject to the Public Utilities Act, shall include the town limits as they exist on May 8, 1973, and shall also include the area proposed to be annexed under the town's ordinance adopted May 3, 1971, until January 1, 1975.
- g. The term "public utility" shall not include a hotel, motel, time share or condominium complex operated primarily to serve transient occupants, which imposes charges to occupants for local, long-distance, or wide area telecommunication services when such calls are completed through the use of facilities provided by a public utility, and provided further that the local services received are rated in accordance with the provisions of G.S. 62-110(d) and the applicable charges for telephone calls are prominently displayed in each area where occupant rooms are located.
- h. The term "public utility" shall not include the resale of electricity by (i) a campground operated primarily to serve transient occupants, or (ii) a marina; provided that (i) the campground or marina charges no more than the actual cost of the electricity

supplied to it, (ii) the amount of electricity used by each campsite or marina slip occupant is measured by an individual metering device, (iii) the applicable rates are prominently displayed at or near each campsite or marina slip, and (iv) the campground or marina only resells electricity to campsite or marina slip occupants.

- i. The term "public utility" shall not include the State, the Department of Information Technology, or the Microelectronics Center of North Carolina in the provision or sharing of switched broadband telecommunications services with non-State entities or organizations of the kind or type set forth in G.S. 143B-426.39.
  - j. The term "public utility" shall not include any person, not otherwise a public utility, conveying or transmitting messages or communications by mobile radio communications service. Mobile radio communications service includes one-way or two-way radio service provided to mobile or fixed stations or receivers using mobile radio service frequencies.
  - k. The term "public utility" shall not include a regional natural gas district organized and operated pursuant to Article 28 of Chapter 160A of the General Statutes.
  - l. The term "public utility" shall include a city or a joint agency under Part 1 of Article 20 of Chapter 160A of the General Statutes that provides service as defined in G.S. 62-3(23)a.6. and is subject to the provisions of G.S. 160A-340.1.
  - m. The term "public utility" shall not include a Ferry Transportation Authority created pursuant to Article 29 of Chapter 160A of the General Statutes.
- (24) "Rate" means every compensation, charge, fare, tariff, schedule, toll, rental and classification, or any of them, demanded, observed, charged or collected by any public utility, for any service product or commodity offered by it to the public, and any rules, regulations, practices or contracts affecting any such compensation, charge, fare, tariff, schedule, toll, rental or classification.
- (25) "Route" means the course or way which is traveled; the road or highway over which motor vehicles operate.
- (26) "Securities" means stock, stock certificates, bonds, notes, debentures, or other evidences of ownership or of indebtedness, and any assumption or guaranty thereof.
- (27) "Service" means any service furnished by a public utility, including any commodity furnished as a part of such service and any ancillary service or facility used in connection with such service.



- (27a) "Small power producer" means a person or corporation owning or operating an electrical power production facility that qualifies as a "small power production facility" under 16 U.S.C. § 796, as amended.
- (28) The word "State" means the State of North Carolina; "state" means any state.
- (29) "Town" means any unincorporated community or collection of people having a geographical name by which it may be generally known and is so generally designated.
- (30) "Panel" means a panel of three commissioners, a division of the Utilities Commission authorized for the purpose of carrying out certain functions of the Commission. (1913, c. 127, s. 7; C.S., s. 1112(b); 1933, c. 134, ss. 3, 8; c. 307, s. 1; 1937, c. 108, s. 2; 1941, cc. 59, 97; 1947, c. 1008, s. 3; 1949, c. 1132, s. 4; 1953, c. 1140, s. 1; 1957, c. 1152, s. 13; 1959, c. 639, ss. 12, 13; 1963, c. 1165, s. 1; 1967, c. 1094, ss. 1, 2; 1971, c. 553; c. 634, s. 1; cc. 894, 895; 1973, c. 372, s. 1; 1975, c. 243, s. 2; cc. 254, 415; 1979, c. 652, s. 1; 1979, 2nd Sess., c. 1219, s. 1; 1981 (Reg. Sess., 1982), c. 1186, s. 2; 1985, c. 676, s. 4; 1987, c. 445, s. 2; 1989, c. 110; 1993, c. 349, s. 1; 1993 (Reg. Sess., 1994), c. 777, s. 1(b); 1995, c. 27, ss. 2, 3; c. 509, s. 34; c. 523, s. 1; 1997-426, s. 8; 1997-437, s. 1; 1998-128, ss. 1-3; 2004-199, s. 1; 2004-203, s. 37(a); 2005-95, s. 2; 2011-84, s. 2(a); 2015-241, s. 7A.4(e); 2017-120, s. 2; 2017-192, ss. 1(a), 6(b).)

#### **§ 62-4. Applicability of Chapter.**

This Chapter shall not terminate the preexisting Commission or appointments thereto, or any certificates, permits, orders, rules or regulations issued by it or any other action taken by it, unless and until revoked by it, nor affect in any manner the existing franchises, territories, tariffs, rates, contracts, service regulations and other obligations and rights of public utilities, unless and until altered or modified by or in accordance with the provisions of this Chapter. (1963, c. 1165, s. 1.)

#### **§ 62-5. Utilities; property affected by boundary certification.**

The owner or occupant of a dwelling unit or commercial establishment on improved property that shall be deemed located in whole or in part in the State of North Carolina as a result of the boundary certification described in G.S. 141-9 may continue to receive utility services from the South Carolina utility or its successor that is providing service to the dwelling unit or commercial establishment on January 1, 2017. However, the owner or occupant may, within his or her discretion, elect to have one or more of the utility services being provided to the property by a South Carolina utility on January 1, 2017, be provided by a North Carolina utility as long as the property is located within the North Carolina utility's service area. A North Carolina utility that is a city or county may require the owner of the property to pay a periodic availability fee authorized by law only if the owner elects to have utility service provided to the dwelling unit or commercial establishment by the North Carolina utility. A South Carolina utility that provides service to the property as

authorized in this section is not a public utility under G.S. 62-3(23), and is not subject to regulation by the North Carolina Utilities Commission as it relates to providing the particular utility service involved. For purposes of this section only, the term "South Carolina utility" has the same meaning as the term "utility" or "utilities" in the Code of Laws of South Carolina, and the term "North Carolina utility" has the same meaning as the term "public utility" which is defined in G.S. 62-3(23), and also includes a city or county that provides any of the services listed in G.S. 160A-311 or G.S. 153A-274, an authority organized under the North Carolina Water and Sewer Authorities Act, or an electric or telephone membership corporation. (2016-23, s. 11(a).)

§ 62-6: Reserved for future codification purposes.

§ 62-7: Reserved for future codification purposes.

§ 62-8: Reserved for future codification purposes.

§ 62-9: Reserved for future codification purposes.